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**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

**ORIGINAL**

<p>Counsel for the State Bar</p> <p><b>Desiree Fairly</b> Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1038</p> <p>Bar # 307991</p>	<p>Case Number(s): 17-O-06877-CV</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>ML</i> <b>DEC 17 2018</b></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Ellen A. Pansky</b> Pansky Markle Attorneys at Law 1010 Sycamore Ave., Suite 308 South Pasadena, CA 91030 (213) 626-7300</p> <p>Bar # 77688</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>STUART MICHAEL PRICE</b></p> <p>Bar # 150439</p> <p>A Member of the State Bar of California (Respondent)</p>		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 4, 1990**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 17 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Effective July 1, 2018)

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-half of the costs must be paid with Respondent's membership fees for each of the following years: two billing cycles following the effective date of discipline.
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
- Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
- Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline:**
- (a)  State Bar Court case # of prior case:
- (b)  Date prior discipline effective:
- (c)  Rules of Professional Conduct/ State Bar Act violations:
- (d)  Degree of prior discipline:
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation. **See page 13.**
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.

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- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 13-14.**
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See pages 14.**
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct. **See page 14.**
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline, see page 14.  
Pretrial Stipulation, see page 14**

**D. Recommended Discipline:**

- (1)  **Actual Suspension:**
- Respondent is suspended from the practice of law for **1 year**, the execution of that suspension is stayed, and Respondent is placed on probation for **2 years** with the following conditions.
- Respondent must be suspended from the practice of law for the first **30 days** of the period of Respondent's probation.
- (2)  **Actual Suspension "And Until" Rehabilitation:**
- Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.
- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
- (3)  **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**
- Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.



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Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6)  **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7)  **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**

- (1)  **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's

compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

- (2)  **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3)  **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4)  **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5)  **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6)  **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
  - c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (7)  **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8)  **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9)  **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10)  **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11)  **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12)  **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must

provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

- (13)  **Other:** Respondent must also comply with the following additional conditions of probation:
- (14)  **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15)  **The following conditions are attached hereto and incorporated:**
  - Financial Conditions
  - Medical Conditions
  - Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

**F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1)  **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2)  **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3)  **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the

date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4)  **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5)  **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because
- (6)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:



10. On May 5, 2016, respondent, through PLG staff, sent a letter alleging that opposing counsel improperly garnished the client's wages in violation of the Fair Debt Collection Practices Act ("FDCPA") by not informing the client's employer to terminate the wage garnishment and by garnishing the client's wages after the debt had been settled. The letter stated that PLG would not file a lawsuit if opposing counsel paid \$4,000. Opposing counsel refused to pay.

11. In a letter dated May 19, 2016, opposing counsel informed respondent of facts demonstrating that opposing counsel was not responsible for improper wage garnishment in violation of the FDCPA. Specifically, opposing counsel informed respondent that the Sheriff's Office, and not the debtor's employer, is the only entity which can terminate a garnishment order. Opposing counsel also informed respondent that the Sheriff's Office had been given timely notice to terminate the wage garnishment, and therefore opposing counsel was not responsible for the mistaken garnishment.

12. Despite the May 19, 2016 letter informing respondent of facts demonstrating that opposing counsel was not responsible for a violation of the FDCPA, respondent filed a lawsuit in the Eastern District Court of California, Case No. 2:16-CV-01361-MCE-GGH entitled *Judy Shepard-Hall v. Gordon and Wong Law Group PC* ("the lawsuit") and certified to the court that the alleged violations of the FDCPA were supported by an objectively reasonable factual and legal basis.

13. The lawsuit claimed that opposing counsel violated the FDCPA because 1) wages were improperly garnished on April 15, 2016 as a result of opposing counsel's failure to promptly inform the client's employer to terminate the wage garnishment, which respondent alleged that opposing counsel had promised to do during various negotiation phone calls between the two law firms, and 2) wages were improperly garnished again on April 29, 2016, despite the client having already paid the lump-sum to settle the debt.

14. As attorney of record in the lawsuit, respondent had the duty to confirm that all pleadings he submitted to the court were supported by an objectively reasonable legal and factual basis after reasonable inquiry. Further, he had the duty to withdraw all pleadings that he later learned were not based in law or fact.

15. After initiation of the lawsuit, in a letter dated September 1, 2016, opposing counsel sent respondent another letter explaining that the lawsuit was frivolous and warning that they would file for sanctions against respondent. The letter cited binding Ninth Circuit precedent in *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926 ("*Guerrero*"), which holds that communications between attorneys are not actionable under the FDCPA. Under *Guerrero*, the alleged communications between opposing counsel and PLG attorneys regarding notification to the client's employer could not be the basis of a lawsuit. There was not a reasonable basis to make a good faith argument for an extension, modification, or reversal of *Guerrero*. Further, the letter attached a notification from the Sheriff's Office, dated June 3, 2016, showing that opposing counsel timely requested termination of the garnishment. There was not a reasonable basis in fact or law to argue that opposing counsel improperly garnished the client's wages.

16. Despite the September 1, 2016 letter, which again informed respondent of facts that rendered respondent's lawsuit frivolous and of case law that precluded the lawsuit under the FDCPA, respondent failed to withdraw the lawsuit.

17. On June 20, 2017, the court granted summary judgement in favor of opposing counsel and granted a motion for sanctions against respondent due to the fact that the lawsuit was precluded under *Guerrero* and filed without a reasonable and competent inquiry into the facts of underlying the case.

The court found that respondent's claims in the lawsuit were frivolous and imposed \$29,507 in sanctions.

18. Respondent requested that a former PLG associate attorney ("NH") draft a Motion for Reconsideration of Sanctions. NH had not worked on the lawsuit prior to respondent's request that he draft the motion and was given a deadline of a few days. NH expected that respondent would review the draft motion for truthfulness and accuracy prior to submitting it to the court.

19. Respondent recklessly failed to review NH's draft Motion for Reconsideration to ensure that the contents were true and accurate. Respondent signed and submitted the Motion for Reconsideration to the court on June 23, 2017 and, due to respondent's failure to supervise NH, the motion contained misrepresentations that opposing counsel had suppressed evidence. Specifically, the motion misrepresented that opposing counsel suppressed two documents: 1) a June 3, 2016 letter from the Sheriff's Office confirming that opposing counsel requested termination of the wage garnishment and 2) an April 15, 2016 phone recording wherein opposing counsel told PLG staff that they would contact the client's employer. In fact, opposing counsel had provided PLG staff the June 3 letter on two occasions. Opposing counsel had also previously produced the April 15 recording during discovery.

20. The court held that the Motion to Reconsider Sanctions was frivolous due to the misrepresentations and imposed additional sanctions against respondent in the amount of \$500.

21. While respondent takes full responsibility for his having neglected to sufficiently supervise his staff in the preparation of the subject motion, respondent did not pursue the lawsuit in bad faith, and his firm does not typically handle wage garnishment cases under the FDCPA, and respondent's involvement in the underlying case was anomalous.

22. In total, the court sanctioned Respondent's firm \$30,007. Respondent's firm timely paid the sanctions without an appeal.

#### CONCLUSIONS OF LAW:

23. By filing and maintaining on behalf of his client the lawsuit entitled *Judy Shepard-Hall v. Gordon and Wong Law Group PC*, when the lawsuit was frivolous and without merit because the claims therein were unsupported by fact and precluded under binding Ninth Circuit case law and not supported by a good faith argument for an extension, modification, or reversal of such case law, respondent willfully violated Business and Professions Code, section 6068(c).

24. By recklessly failing to supervise his former associate attorney, resulting in respondent submitting a frivolous Motion for Reconsideration to the court in the lawsuit entitled *Judy Shepard-Hall v. Gordon and Wong Law Group PC*, respondent recklessly failed to perform legal services with competence in willful violation of former Rules of Professional Conduct, rule 3-110(A).

#### AGGRAVATING CIRCUMSTANCES.

**Misrepresentation (Std. 1.5(e)):** Respondent's failure to perform with competence resulted in respondent submitting a motion to the court which contained multiple misrepresentations.

**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** Due to respondent's frivolous litigation, the court expended valuable judicial resources by issuing a summary

judgment ruling against respondent and twice imposing monetary sanctions based on frivolous pleadings.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** The facts underlying the charges in this case include multiple acts of misconduct. (*Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [multiple acts as aggravation are not limited to counts pleaded].) Respondent filed a frivolous lawsuit, then filed a frivolous pleading in the same lawsuit over one year later, and failed to perform with competence by not adequately supervising a former associate attorney. (*Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts]; *Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245 [filing three annual false tax returns considered aggravation for multiple acts because the misconduct was separated by time sufficient to allow the attorney to consider his actions].)

#### MITIGATING CIRCUMSTANCES.

**Extraordinary Good Character (Std. 1.6(f)):** Respondent provided nine letters from a wide range of references in the legal and general community, including former clients, other attorneys and personal friends, each attesting to respondent’s good character and awareness of the full extent of respondent’s misconduct.

**No Prior Discipline:** Respondent was admitted to the practice of law on December 4, 1990 and has no prior record of discipline. At the time he filed the frivolous complaint in June 2016, he had over 25 years of discipline free practice and therefore is entitled to substantial mitigation under Standard 1.6(a). (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years is worth significant weight in mitigation].)

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney’s stipulation to facts and culpability was held to be a mitigating circumstance].)

#### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 1.7(a) holds that where a member commits two or more acts of misconduct and the Standards specify different sanctions, the most severe sanction must be imposed. Standard 2.7, applicable to respondent’s failure to perform, and Standard 2.9, pertaining to filing frivolous litigation, both presume a range of discipline based on numerous factors. Standard 2.7(c) states that suspension or reproof is the presumed sanction for performance violations that are limited in scope or time; the degree of discipline depends on the extent of the misconduct and the degree of harm to the client. Here, respondent’s failure to perform was not limited in scope or time because he maintained a frivolous lawsuit over the course of a year, even after being informed by opposing counsel that his claims had no basis in fact or law.

Here, respondent committed multiple acts of misconduct by failing to perform with competence and maintaining a frivolous lawsuit. Though neither respondent’s failure to perform nor his frivolous litigation is marked by malicious intent, the misconduct caused significant harm to the administration of justice due to the expenditure of valuable judicial resources that were required to halt respondent’s ongoing frivolous lawsuit. Further, respondent failed to ensure that his former associate’s draft motion was accurate and correct even after respondent had recently been sanctioned in the same lawsuit for filing the complaint without conducting a reasonable inquiry into facts. Respondent’s reliance on his former associate was unreasonable because that attorney no longer worked for respondent’s firm at the time he wrote the motion, was unfamiliar with the specific facts of the case, and believed that he was providing a draft that respondent would review prior to submitting it to the court. Respondent’s mitigation is diluted by the aggravating factors in this case. Here, although the violations are limited to one client matter, the sustained period of misconduct and resulting harm, as well as misrepresentations of fact contained in the court filings, indicate that significant discipline is warranted.

Case law supports an actual suspension in this matter. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the Supreme Court held that failure to perform legal services for a client in an uncontested marital dissolution proceeding, failure to communicate with the client, improper withdrawal of representation, and failure to cooperate in the State Bar’s investigation warranted a 30 day actual suspension for an attorney with no prior record of discipline. The gravamen of respondent’s misconduct is similar to *Bach*, as respondent also failed to perform legal services with competence. Like the attorney in *Bach*, respondent also committed further misconduct, though continuing to maintain the frivolous filings is more serious misconduct.

A 30-day actual suspension, with one year stayed suspension and a one-year probation is in the range of the applicable Standard, supported by case law, and appropriate given the balance of aggravation and mitigation.

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**WAIVER.**

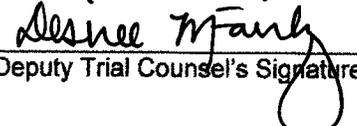
The parties expressly waive any discrepancy between the stipulated violations herein and those alleged the Notice of Disciplinary Charges filed in this matter.

(Do not write above this line.)

In the Matter of: STUART M. PRICE	Case Number(s): 17-O-06877-CV
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>11-29-18</u> Date	 Respondent's Signature	<u>Stuart M. Price</u> Print Name
<u>11-30-18</u> Date	 Respondent's Counsel Signature	<u>Ellen Pansky</u> Print Name
<u>11-30-18</u> Date	 Deputy Trial Counsel's Signature	<u>Desiree Fairly</u> Print Name

(Do not write above this line.)

In the Matter of: Stuart Michael Price	Case Number(s): 17-O-06877
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**ACTUAL SUSPENSION ORDER**

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 15 of the Stipulation, last paragraph, line 1, "one-year probation" is deleted, and in its place is inserted "two-year probation".

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

December 17, 2018  
Date

Rebecca Meyer Rosenberg  
**REBECCA MEYER ROSENBERG, JUDGE PRO TEM**  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 17, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

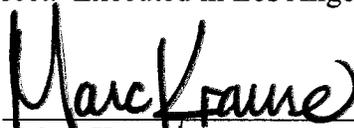
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY  
PANSKY MARKLE ATTORNEYS AT LAW  
1010 SYCAMORE AVE UNIT 308  
S PASADENA, CA 91030 - 6139

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

DESIREE M. FAIRLY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 17, 2018.



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Marc Krause  
Court Specialist  
State Bar Court